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10/608,058	06/27/2003	Skye Lechner Wollenberg	501343.01	7901

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EXAMINER
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BUECHNER, PATRICK M

ART UNIT	PAPER NUMBER
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3754

DATE MAILED: 03/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/608,058

Applicant(s)

WOLLENBERG ET AL.

Examiner

Patrick M Buechner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 June 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 6/27/2003.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Double Patenting*

1. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

2. Claims 1, 2, 5-13, 17-20 and 24-28 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-20 of copending Application No. 10/272230.

This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 3, 4, 14-16, and 21-23 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 10, and 14 of copending Application No. 10/272230 in view of Jette (US 4,273,289). Claims 1, 10, and 14 of

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copending Application No. 10/272230 disclose all the limitations of claims 3, 4, 14-16 and 21-23, with the exception of a collar having threads to engage with threads on the second engagement member to retain the spherical portion in the concavity and to adjust the position of the first engagement member relative to the second engagement member.

Jette teaches a ball and socket fitting having a threaded collar (30) engaged to a threaded portion (32) of the second engagement member (28) retaining the spherical portion in the concavity and inherently adjustable to retain the first and second engagement members in a desired position.

Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to provide the device of copending Application No. 10/272230 with the collar as taught by Jette.

Doing so would allow for easier assembly and disassembly of the joint which would allow for easier cleaning of the passageways of the joint.

This is a provisional obviousness-type double patenting rejection.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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6. Claims 1-6 and 12-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Jette.

Jette discloses an apparatus for applying a liquid material, comprising:

an applicator device (18), a supply vessel having an interior volume (not shown, but inherent, a water heater); and a swivel assembly (20, 22) coupled between the supply vessel and the applicator device, the swivel assembly including a first engagement member having a protruding portion (20) and a first passageway disposed therethrough, and a second engagement member (22, 28) having a concavity and a second passageway disposed therethrough, the protruding portion being moveably engaged within the concavity such that the interior volume of the supply vessel fluidly communicates with the applicator device through the first and second passageways (Figure 3).

Jette also discloses the first engagement member is attached to the supply vessel and the second engagement member is attached to the applicator device (Figure 3).

Jette also discloses the protruding portion comprises a partially spherical portion and wherein the concavity composes a partially spherical concavity (Figure 3).

Jette also discloses the protruding portion is rotatably and pivotally moveable within the concavity (column 1, lines 39-46).

Jette also discloses a ball and socket fitting having a threaded collar (30) engaged to a threaded portion (32) of the second engagement member (28) retaining the spherical portion in the concavity and inherently adjustable to retain the first and second engagement members in a desired position.

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The claim limitations of "for applying a liquid coating material" are an intended use and not given any patentable weight. Even if "for applying a liquid coating material" was given patentable weight, Jette discloses a showerhead dispensing water, which coats whatever will happen to be placed within the stream.

7. Claims 1, 2, 5, 6, 10 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Hengesbach (US 4,035,004).

Hengesbach discloses an apparatus for applying a liquid coating material, comprising: an applicator device (G), a supply vessel having an interior volume (C); and a swivel assembly (5, 6) coupled between the supply vessel and the applicator device, the swivel assembly including a first engagement member having a protruding portion (5) and a first passageway disposed therethrough, and a second engagement member (6) having a concavity and a second passageway disposed therethrough, the protruding portion being moveably engaged within the concavity such that the interior volume of the supply vessel fluidly communicates with the applicator device through the first and second passageways (Figures 3-7).

Hengesbach also discloses the first engagement member is attached to the supply vessel and the second engagement member is attached to the applicator device (Figure 1).

Hengesbach also discloses the protruding portion comprises a partially spherical portion and wherein the concavity composes a partially spherical concavity (Figure 4).

Hengesbach also discloses the protruding portion is rotatably and pivotally moveable within the concavity (column 2, lines 51-68, column 3, lines 1-24).

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Hengesbach also discloses the first engagement member is threadedly coupled to the supply vessel and the second engagement member is threadedly coupled to the applicator device (Figure 4).

Hengesbach also discloses a pressure source (A) coupled to the applicator device.

8. Claims 1, 2, 5, 6, 10, 12, 13, 17 and 18 are rejected under 35 U.S.C. 102(e) as being anticipated by Norville et al. (US 6,409,103).

Norville discloses an apparatus for applying a liquid material, comprising: an applicator device (42), a supply vessel having an interior volume (unlabeled Figure 4); and a swivel assembly (38, 40) coupled between the supply vessel and the applicator device, the swivel assembly including a first engagement member having a protruding portion (38a) and a first passageway disposed therethrough, and a second engagement member (38c) having a concavity and a second passageway disposed therethrough, the protruding portion being moveably engaged within the concavity such that the interior volume of the supply vessel fluidly communicates with the applicator device through the first and second passageways (Figure 4).

Norville also discloses the first engagement member is attached to the supply vessel and the second engagement member is attached to the applicator device (Figure 4).

Norville also discloses the protruding portion comprises a partially spherical portion and wherein the concavity composes a partially spherical concavity (Figure 5).

Norville also discloses the protruding portion is rotatably and pivotally moveable within the concavity (Figure 4).

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Norville also discloses the first engagement member is threadedly coupled to the supply vessel and the second engagement member is threadedly coupled to the applicator device (Figure 5).

The claim limitations of "for applying a liquid coating material" are an intended use and not given any patentable weight.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

11. Claims 3, 4, 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Norville in view of Jette.

Norville discloses all the limitations of claims 3, 4, 14-16, as discussed above in 8, with the exception of a collar having threads to engage with threads on the second engagement



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member to retain the spherical portion in the concavity and to adjust the position of the first engagement member relative to the second engagement member.

Jette teaches a ball and socket fitting having a threaded collar (30) engaged to a threaded portion (32) of the second engagement member (28) retaining the spherical portion in the concavity and inherently adjustable to retain the first and second engagement members in a desired position.

Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to provide the joint of norville with the collar as taught by Jette.

Doing so would allow for easier assembly and disassembly of the joint which would allow for easier cleaning of the passageways of the joint.

12. Claims 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Norville in view of Costea (US 6,443,332).

Norville discloses all the limitations of claims 7-9, as discussed above in 8, with the exception of recessed portion in the first engagement member for receiving a tapered portion of the outer wall of the second engagement member.

Costea teaches a ball and socket swivel having a recessed portion in the first engagement member for receiving a tapered portion of the outer wall of the second engagement member (unlabelled Figure 1).

Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to provide the ball and socket swivel of Norville with the construction of the taper and recess as taught by Costea.

Doing so would allow for further movement of the applicator device.

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13. Claims 19, 20 and 24-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Spitznagel (US 5,803,360) in view of Norville.

Spitznagel discloses a method of supplying a liquid material to an applicator device, comprising: coupling a supply vessel (42) to the applicator device (18) using a swivel assembly (abstract lines 4-6), Spitznagel discloses a first passageway (56), and a second passageway (54), and the first passageway being in fluid communication with the second passageway (Figure 1); providing the liquid material into the supply vessel, and flowing the liquid material from the supply vessel through the first and second passageways to the applicator device (column 2, lines 60).

Spitznagel also discloses flowing compressed gas through the applicator device (inherent in the disclosure to one of ordinary skill in the art given the fittings shown on the gun in Figure 11, and the fact that this is a gravity fed "spray" gun).

Spitznagel discloses gravitationally flowing the liquid material from the supply vessel (abstract line 2).

Spitznagel does not disclose the swivel fitting having a first member with a protruding portion having a spherical shape and being rotatable and pivotable within a second member of the fitting that has a concavity to receive the spherical portion of the first member.

Norville, as discussed above, teaches a swivel fitting having a first member with a protruding portion having a spherical shape and being rotatable and pivotable within a second member of the fitting that has a concavity to receive the spherical portion of the first member.

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Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to provide the spray gun of Spitznagel with the fitting taught by Norville in order to perform the method claimed.

Doing so would give the paint cup of Spitznagel three degrees of freedom instead of two, and would reduce the number of machined components required for the fitting.

14. Claims 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Spitznagel in view of Norville as applied to claim 19 above, and further in view of Jette.

Spitznagel in view of Norville discloses all the limitations of claim 19, as discussed above in 13, with the exception of a collar having threads to engage with threads on the second engagement member to retain the spherical portion in the concavity and to adjust the position of the first engagement member relative to the second engagement member.

Jette teaches a ball and socket fitting having a threaded collar (30) engaged to a threaded portion (32) of the second engagement member (28) retaining the spherical portion in the concavity and inherently adjustable to retain the first and second engagement members in a desired position.

Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to perform the method disclosed by Spitznagel in view of Norville with the collar as taught by Jette.

Doing so would allow for easier assembly and disassembly of the joint which would allow for easier cleaning of the passageways of the joint.

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*Conclusion*


15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Zihlerl (US 2,647,796) discloses a ball and socket fitting for a spraying device.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patrick M Buechner whose telephone number is (703) 308-2602. The examiner can normally be reached on 7:00am-4:30pm M-Th and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Mancene can be reached on (703) 308-2696. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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